UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

MACTEC DEVELOPMENT CORPORATION

Employer[1]

and Case 14-RC-12702

LOCAL 513, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Mactec Development Corporation, provides engineering, demolition, and construction services to customers throughout the United States, including services for AmerenUE at the Taum Sauk project located in Middlebrook, Missouri. The Petitioner, Local 513, International Union of Operating Engineers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time heavy equipment operators, mechanics, and oilers employed by the Employer at its Taum Sauk[2] project. A hearing officer of the Board held a hearing and the Employer filed a brief with me, which I have carefully considered.

The parties stipulated that the petitioned-for unit is appropriate. As evidenced at the hearing and in the brief, the parties disagree on the eligibility of seven individuals:

[1] The Employer's name appears as amended at hearing.

[2] While the Employer's commerce stipulation refers only to the Johnson's Shut-Ins project, the record reflects Johnson's Shut-Ins is part of the Taum Sauk project, which includes work being performed at Johnson's Shut-Ins State Park and at Goggins Mountain Campgrounds. The record reflects the parties intend for the unit to encompass the entire Taum Sauk project, including the Goggins Mountain Campgrounds, and employees in the petitioned-for unit are currently working at both the Johnson's Shut-Ins and Goggins Mountain Campgrounds jobsites.

Clayton Buntion, Dennis Keith, David Volner, Robert Chitwood, William Carl, Richard Harris, and Jason Allen. The Employer argues that Buntion and Keith are heavy equipment operators who are temporarily assigned to other projects but who have a reasonable expectancy of returning to the Taum Sauk project and should be eligible to vote. The Petitioner argues these two individuals do not have a reasonable expectancy of "recall" and further that Keith is not a heavy equipment operator. The Employer contends Volner and Chitwood are drivers and are not eligible to vote while the Petitioner argues that Volner and Chitwood are classified as heavy equipment operators and perform operator work and should be included in the unit. The Employer contends that Carl, Harris, and Allen are all heavy equipment operators and should be included in the unit, while the Petitioner contends Carl and Allen are laborers and Harris is an office employee and they should all be excluded from the unit.

The record also reflects a disagreement between the parties over the applicability of the *Daniel/Steiny* formula for determining eligibility. *Steiny and Co., Inc.,* 308 NLRB 1323, 1327 (1992); *Daniel Construction Co.,* 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967). At hearing, the Employer contended the formula should be used while the Petitioner argued the application of such a formula is inappropriate because the Employer employs "core" employees.

For the reasons set forth below, I have concluded that Buntion, Volner, Chitwood, and Allen are all eligible to vote, and that Carl, Keith, and Harris are not eligible to vote. Accordingly, I have directed an election in the petitioned-for unit of heavy equipment operators, mechanics, and oilers employed by the Employer at its Taum Sauk project, which currently consists of approximately 14 heavy equipment operators and 1 mechanic. I have also directed, for the reasons stated below, that the *Daniel/Steiny* eligibility formula be applied to the election in the petitioned-for unit.

I. OVERVIEW OF OPERATIONS

A. The Employer's Operations

The Employer's Taum Sauk project currently includes two separate projects: the restoration and building of boardwalks at Johnson's Shut-Ins State Park, and the construction of enhancements to Goggins Mountain Campgrounds where employees are currently working on storm lines and drainage. The Goggins Mountain Campgrounds jobsite is approximately 1 mile from the Johnson's Shut-Ins jobsite. The Taum Sauk project is one of several projects the Employer is currently working on nationwide, but it is the only project involved here. The Employer began work on the Taum Sauk project in December 2005 and is expected to complete work on this project in approximately 15 months from the hearing date. The parties do not dispute that the Employer is engaged in construction work at the Taum Sauk project.

The Taum Sauk project is being performed by the Employer's Demolition and Remedial Services Division. The record does not reflect the Employer's exact hierarchy at the Taum Sauk project. The project does have a site superintendent, Jared Lane, and a project manager, Mark Cade. Billy Reid, Jr., is the division manager for the Demolition and Remedial Services Division and works with all the project managers at the Employer's various jobsites. According to Employer's Exhibit 1, as amended by the Employer's witnesses at hearing, there are approximately 48 employees assigned to the Taum Sauk project, including Site Superintendent Lane, who is classified as a Crew Foreman III, and Buntion and Keith, who are not physically present at the Taum Sauk jobsite. Employees at the Taum Sauk project are classified as Heavy Equipment Operators I, II, III, and IV; Engineering Techs I and II; Sr. Maintenance Tech I and Maintenance Tech II; General Laborer I; Crew Foreman I, II, and III; Health and Safety Tech II; and Admin Assistant I. The Employer was recently notified by the Department of Labor that the Taum Sauk project is considered a prevailing wage job and the

Employer is in the process of reviewing and changing its job classifications. The one employee the parties stipulated is a mechanic and included in the unit is not listed on Employer's Exhibit 1. There are currently no oilers though there have been in the past and the parties stipulated that the classification of oiler is appropriately included in the unit.

The Employer hires employees for specific projects. The offers of employment provided by the Employer with respect to the seven individuals in dispute reflect that they were all hired as "Specified Term" employees, which is defined as being hired for a specific project. All seven were hired specifically for the Taum Sauk project.

B. Applicability of *Daniel/Steiny* Eligibility Formula

The Petitioner argued at hearing that the Employer employs only "core" employees and therefore the construction industry eligibility formula of *Daniel/Steiny* does not apply to this Employer. The Petitioner presented no evidence that the Employer employs only "core" employees; indeed as noted above, the record reflects that the Employer hires employees for specific projects. Even if the Employer did have "core" employees, however, this would not make the *Daniel/Steiny* formula inappropriate. The Board, in *Steiny*, held that the *Daniel* formula is applicable in **all** construction industry elections regardless of whether the employer hires employees on a project-by-project basis or hires a stable, core group of employees. *Steiny*, supra at 1327-1328. See also, *Turner Industries Group, LLC*, 349 NLRB No. 42, slip op. at 9-10 (2007). Where, as here, there is no stipulation by the parties not to use the *Daniel/Steiny* formula, the formula will be applied. *Signet Testing Laboratories, Inc*., 330 NLRB 1, (1999). Accordingly, I shall include the *Daniel/Steiny* eligibility formula in directing the election in the petitioned-for unit.

II. STATUS OF DISPUTED EMPLOYEES

A. Clayton Buntion and Dennis Keith

The record reflects that the Employer on occasion assigns employees temporarily to other concurrent projects. The Employer does not consider such temporary assignments to be transfers and still carries the employees on the payroll of their "permanently" assigned location. The Employer refers to such employees as being on "temporary routine travel" assignments. Both Clayton Buntion and Dennis Keith have been assigned "temporary routine travel" assignments outside of the Taum Sauk project, though they are both still carried on the Employer's payroll for the Taum Sauk project. The work performed by these two employees, however, is charged to the project they are physically working at.

Employee Buntion is classified by the Employer as a Heavy Equipment Operator II. He was hired for the Taum Sauk project in January 2007 and physically worked at the Taum Sauk project as an operator until September 1, 2007, when he volunteered to go to a project in Nebraska during a slow time on the Taum Sauk project. Buntion is performing as an operator at the Nebraska site. The completion date for the Nebraska project has been extended for another 30 to 60 days, at which time Buntion is expected to return to the Taum Sauk project and continue working as an operator. Buntion has visited the Taum Sauk project a few times since being assigned to the Nebraska project. The record reflects the Employer expects work to pick up at the Taum Sauk project in the spring of 2008, which is when Buntion is expected to return to the jobsite. While the Petitioner argued that Buntion is a supervisor on the Nebraska project, the Petitioner did not present any evidence to establish Buntion's alleged supervisory status either at the Nebraska jobsite or at the Taum Sauk jobsite.

Employee Dennis Keith is classified as a Heavy Equipment Operator III for the Taum Sauk project, though he currently does not work at that location. Keith was hired

for the Taum Sauk project on January 19, 2006. The record reflects Keith performed operator work, including operating a finishing bulldozer, until his heart attack in December 2006. According to the documents contained in Keith's personnel file, Employer Exhibit 5, Keith then took a leave of absence from December 24, 2006 through March 18, 2007. When Keith returned to the Taum Sauk project from the medical leave of absence, he was assigned light-duty work in an office reviewing designs and helping to prepare estimates.

Effective December 21, 2007, Keith was assigned to work at a project in Florida as a construction manager overseeing subcontractors who are performing the grading work on the construction of a VA cemetery. Keith does not have any of the Employer's employees working under him at that Florida project. Keith has continued to work in Florida through the date of the hearing. No one contends, nor does the record reflect, that Keith is a supervisor under Section 2(11) of the Act at either the Florida jobsite or the Taum Sauk jobsite. Site Superintendent Lane testified that Keith has not been physically capable of operating heavy equipment since his heart attack in 2006 and has not operated heavy equipment since that time.

Unlike Buntion, the Employer could not definitely state that Keith would be returning to the Taum Sauk project at the completion of the Florida project. Division Manager Reid testified only that Keith would "probably" return, and that Reid estimated the Florida project would be completed in the next month or two but could not state for certain the schedule of the Florida project. Division Manager Reid could also not state for certain whether Keith would be operating equipment when he returns from the Florida project.

While the Employer does not consider Buntion or Keith to be temporarily laid off or transferred, their temporary reassignments primarily due to work slowdowns at the Taum Sauk project are analogous to layoffs and transfers. The Employer argues that

Buntion and Keith have a reasonable expectancy of recall to the Employer's Taum Sauk project, and thus have a sufficient community of interest with the employees in the petitioned-for unit as to warrant their inclusion. The Petitioner argues Buntion and Keith have no reasonable expectancy of recall and further that Buntion is a supervisor on the Nebraska project and Keith is an office employee. Because the Petitioner did not present any evidence regarding the supervisory status of Buntion, and the record fails to reflect evidence of any supervisory status, I conclude that Buntion is not a supervisor within the meaning of the Act. I further find that Buntion is a heavy equipment operator with a reasonable expectancy of recall to the Taum Sauk project and is eligible to vote, while Keith does not perform operator's work and does not have a reasonable expectancy of recall.

The eligibility of laid off or transferred employees depends on whether objective factors support a reasonable expectancy of recall in the near future to a unit position, which establishes the temporary nature of the layoff or transfer. See *Apex Paper Box Co.,* 302 NLRB 67, 68 (1991); *Mrs. Baird's Bakeries, Inc*., 323 NLRB 607 (1997). The factors used by the Board to determine whether a reasonable expectancy of recall exists include the employer's past practice and future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall. *The Pavilion at Crossing Pointe*, 344 NLRB 582, 583 (2005).

The record reflects Buntion has a reasonable expectancy of recall to a unit position at the Taum Sauk project. The Employer's past practice establishes that employees sent on "temporary routine travel" assignments are kept on the Taum Sauk payroll and return to the jobsite when the temporary assignment is completed. Three Taum Sauk employees, including Buntion, were each temporarily assigned to work at another project in West Virginia for 2 weeks and, at the conclusion of that project, returned to the Taum Sauk project. The Employer also sent another employee to

another Missouri jobsite for a week, who then returned to the jobsite. The Employer's future plans reflect that the Employer intends to have Buntion return to the Taum Sauk project when the Nebraska project ends within approximately 30 to 60 days. There is no record evidence to indicate Buntion was told anything inconsistent with the assignment being temporary. Site Superintendent Lane testified he has already had conversations with Buntion about the type of work he will be performing upon his return, including operating heavy equipment such as the track hoe and excavator. The fact that Buntion's exact return date is not known does not establish that Buntion does not have a reasonable expectancy of recall. *The Pavilion at Crossing Pointe*, supra at 583-584. Thus, the record reflects Buntion has a reasonable expectancy of returning to a unit position upon his return to the Taum Sauk project. Accordingly, I shall include Buntion in the petitioned-for unit.

Unlike Buntion, Keith does not have a reasonable expectancy of recall to a unit position at the Employer's Taum Sauk facility. First, the likelihood of Keith returning to the Taum Sauk project appears to be in question given the testimony of Division Manager Reid, who could not state with certainty that Keith would return to the jobsite, and questioned whether the Employer would need Keith upon his return. Second, Division Manager Reid also testified that if Keith does return, the Employer would likely not place him in a "high production role", making his return to a unit position too speculative. Given that Keith has not operated any heavy equipment since his heart attack in December 2006, even after returning to work full-time after a leave of absence, and given that the record reflects Keith's return as an operator is speculative at best, Keith does not have a reasonable expectancy of recall to a unit position at the Taum Sauk project. *The Pavilion at Crossing Pointe*, supra; *Apex Paper Box Co.,* supra. Accordingly, I shall exclude Keith from the petitioned-for unit.

B. David Volner and Robert Chitwood

The Employer contends employees David Volner and Robert Chitwood are drivers and therefore are not included in the petitioned-for unit. The Petitioner argues that these two employees drive "articulated dump trucks" which are considered to be heavy equipment, and therefore they are heavy equipment operators and included in the unit. I find, for the reasons set forth below, that Volner and Chitwood are performing the work of heavy equipment operators, and I shall include them in the petitioned-for unit.

The Employer classifies Volner and Chitwood on Employer's Exhibit 1 as Engineering Tech IIs. The Employer's Exhibit 2, containing job descriptions, does not contain any job descriptions for Engineering Tech I or II. The Employer witnesses testified that Engineering Tech I is considered an unskilled laborer classification, while Engineering Tech II is considered the "same thing as" a skilled laborer classification. The job duties of Engineering Techs other than Volner and Chitwood are not established in the record. Volner and Chitwood primarily drive off-the-road dump trucks, also referred to as articulated trucks. Articulated trucks can turn on a shorter radius than standard trucks and can be driven into more areas. Volner and Chitwood currently spend about 90 percent of their time driving articulated dump trucks. They spend the other 10 percent of their time operating other heavy equipment including loaders, bulldozers, and skid steers. While there are other individuals classified on Employer's Exhibit 1 as Engineering Tech IIs, Division Manager Reid testified that these other Engineering Tech IIs who had driven articulated trucks in the past have now gone back to having "the majority of their responsibilities as being a laborer in nature."

Division Manager Reid testified that driving articulated dump trucks is not an operator's job. The Employer's Heavy Equipment Operator job descriptions, however, refer to the operation of loaders, dozers, and articulated dump trucks, and the Employer's site superintendent testified that the Heavy Equipment Operators are

expected to operate such vehicles. One unit employee classified as a heavy equipment operator testified that one of the pieces of heavy equipment that he operates is an articulated dump truck. This employee also testified that he has observed Volner and Chitwood operating other pieces of heavy equipment such as a bulldozer and a skid steer on an almost daily basis, with one of the two operating the articulated dump truck and the other operating a bulldozer or skid steer.

The Employer argues that it has recently reclassified Volner and Chitwood as drivers because under prevailing wage regulations articulated dump truck drivers are classified as drivers. The Employer has no job description for a driver classification. The record does not reflect whether other employees at the Taum Sauk project have been reclassified as drivers. While there are employees whom neither party now seeks to include, who formerly drove articulated dump trucks, it is not clear from the record whether those employees remain employed, the extent to which they operated "heavy equipment", and what other duties they may have performed. What is clear is that Volner and Chitwood regularly and essentially exclusively operate equipment of the sort that unit employees also operate.[3] Accordingly, I find that these two employees have a substantial interest in the working conditions of the unit employees with whom they share a community of interest, and I shall include them in the unit found appropriate.[4]

C. Jason Allen

The Employer argues that Jason Allen is an operator, that he is classified as a heavy equipment operator, and that he currently performs operator's work. The

[3] While the extent to which Heavy Equipment Operators operate articulated dump trucks is not clear, it is clear that this particular equipment is something that they are expected to, and do, operate. Neither party argues that bulldozers and skid steers are not "heavy equipment."

[4] The Employer argues, in its brief, that the Petitioner is using this proceeding as a 10(k) hearing to determine whether the driving of articulated trucks is operator or teamster work. The issue here is not which of two competing groups is entitled to perform the work, but whether the disputed employees Volner and Chitwood, who perform some of the same duties as unit employees, should be represented in the appropriate unit.

Petitioner argues that Allen is a laborer who does not perform operator's work and should be excluded from the unit.

Allen was initially hired as an Engineering Tech I (Laborer) in August of 2006. He then became a Heavy Equipment Operator I a month later. The record reflects Allen's duties changed as the nature of the project changed. When work for operators slowed in 2007, Allen began performing laborers' work, which he continued to perform for about 7 to 8 months. Site Superintendent Lane testified that recently the need for operator work has increased as the Employer had anticipated it would, and Allen was reassigned shortly before the hearing to the classification of operator and is currently working as an operator, operating a bulldozer. The Employer plans to continue utilizing Allen as an operator in the future. The Petitioner did not rebut the Employer's evidence that Allen is now performing operator's work, nor did it present any evidence to rebut the Employer's future plans for this employee. As Allen is currently working as an operator, and the record reflects he previously performed operator's work for several months in 2006 and 2007, I shall include Jason Allen in the petitioned-for unit.

D. William Carl

The Employer contends that William Carl is an operator and should be included as at least a dual-function employee. Carl is classified as a Senior Maintenance Tech I, which is not a unit position, but the Employer argues he spends a "substantial portion" of this time operating a grader, which is considered operators' work. The Petitioner argues Carl is a laborer and does not perform unit work.

The Employer does not have a job description for a Senior Maintenance Tech I. While the Employer argues, in its brief, that as a maintenance technician Carl performs maintenance on heavy equipment, there is no record evidence of Carl performing such duties. The only job description for a maintenance technician position was the description for (Carpenter) Maintenance Tech II, which lists various carpentry duties and

responsibilities including remodeling and framing. The record reflects this job description is not accurate with respect to Carl, who does not perform carpentry work. Carl is not classified, nor has he ever been classified, as a heavy equipment operator. The record reflects that prior to the spring of 2007, Carl did some grading work which is operators' work, though the record fails to reflect when and for how long Carl did such work. Since the spring of 2007, however, Carl has been a flagging foreman responsible for overseeing the work of the flaggers who direct traffic on the public roadways. Flagging is considered a laborer's job and is included in the Employer's General Laborer I job description. There is no evidence that the employees stipulated to be in the petitioned-for unit perform flagging work.

Site Superintendent Lane testified that Carl "mostly" performs work as a flagger foreman, though Carl does "get on" a piece of equipment such as broom or grader. However, the Employer failed to present specific evidence with respect to the percentage of time Carl spends operating heavy equipment as opposed to performing the non-unit functions of the flagger foreman. While Lane testified, at another point in the hearing, that Carl got on a broom on a daily basis, one of the Employer's operators testified Carl only operates a broom one to two times a week, and, when he does, it is only for 5 to 10 minutes. The Employer contends that under prevailing wage regulations, Carl has to be reclassified an operator, though the Employer offers no such explanation on the record for why a flagging foreman has to be classified as an operator for prevailing wage purposes. Further, Carl is still classified on Employer's Exhibit 1 as a Senior Maintenance Tech I, not as a Heavy Equipment Operator, and he is still listed as a foreman for flaggers on the Employer's assignment sheet.

Carl is currently assigned to the non-unit position of flagger foreman. The record does not reflect that Carl performs unit work on a regular basis; rather, the record reflects that any operation of heavy equipment by Carl is sporadic in nature. The

inconclusive, non-specific evidence that Carl occasionally "gets on" a piece of equipment, or that he operates a broom for a few minutes a day, does not establish that Carl, since becoming a flagger foreman, regularly performs work similar to unit employees for a sufficient period of time to demonstrate that he has a substantial interest in the working conditions of the unit. Accordingly, I cannot conclude that Carl should be included as a heavy equipment operator or even a dual-function employee since becoming a flagging foreman in the spring of 2007.

E. Richard Harris

The Employer contends that employee Richard Harris was recently reclassified as an operator for prevailing wage purposes, but the Employer offered no explanation for this reclassification of Harris. Harris is currently listed on Employer's Exhibit 1 as a Maintenance Tech II. As noted above, the only job description for a maintenance technician is one for a carpenter maintenance technician and there is no evidence Harris performs carpentry work, so this job description is inaccurate with respect to Harris' duties. There is no evidence that Harris performs the same duties as the other employees classified as Maintenance Techs, or that the other Maintenance Techs actually perform the duties set forth in the Maintenance Tech job description. Regardless of Harris' job title, the record fails to reflect that Harris performs any unit work, either as an operator, oiler, or mechanic.

Harris' primary function is to order machinery parts and other supplies for the jobsite. The foremen on the project make requisition requests which are handled by Harris. Unlike the employees in the petitioned-for unit, Harris works in an office and has his own desk. Harris is not assigned to repair the equipment when the parts come in; a mechanic is assigned to perform this work. There is no evidence Harris performs mechanic's work or that he does so on a regular basis. Site Superintendent Lane testified vaguely that Harris may "perform things now and then" and may "turn a wrench".

There is no specific testimony as to what mechanical work Harris does or how often he turns a wrench, or even what percentage of his time is spent performing mechanical work. Similarly, there is no record evidence as to what, if any, operator's work Harris performs or how frequently he performs it. Employer's Exhibit 4 indicates Harris was notified on August 25, 2007, that he would not be permitted to drive the Employer's vehicles due to an unsafe driving record, and the record fails to reflect whether Harris was even allowed to drive or operate heavy equipment at the time of the hearing.

The record reflects that Harris' primary duty is to order parts and supplies, and any mechanical or operator work he might do is not a regular, scheduled event but rather sporadic in nature and not sufficient to find Harris to be an operator or mechanic, or even a dual-function employee. Accordingly, I shall exclude Harris from the petitioned-for unit. Further, because the record fails to establish that Harris ever regularly performed any duties as an operator, mechanic, or oiler since his hire date in March 2007, Harris is not part of the unit found appropriate herein.

III. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time heavy equipment operators,[5] mechanics,[6] and oilers[7] employed by the Employer at the Taum Sauk project located in Middlebrook, Missouri, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Local 513, International Union of Operating Engineers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the

[5] The parties stipulated that the following employees are employed in the classification of heavy equipment operators and should be included in the unit: Preston Browers, Gary Conway, Jonathan Griffith, Garry Hartwick, Derrick Haus, Jason King, Drew Kirby, Bill Rothlisberger, Michael Stirts, and Troy Wilkin. Accordingly, in agreement with the parties, I shall include these individuals in the unit. I shall also permit William Carl to vote provided he is eligible under the *Daniel/Steiny* formula.

[6] The parties stipulated that Warren Morris is employed in the classification of mechanic and should be included in the unit. Accordingly, in agreement with the parties, I shall include this individual in the unit.

[7] The parties do not currently have any employee in the position of oiler.

election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed in the unit for total of 30 working days or more within a period of 12 months immediately preceding the eligibility date for the election, or who have some employment in the unit in that period and have been employed 45 working days or more in the unit within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. *Steiny and Co., Inc.,* 308 NLRB 1323, 1327 (1992); *Daniel Construction Co*., 133 NLRB 264 (1991), as modified at 167 NLRB 1078 (1967).

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list for the unit,

containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must by received in Region 14, 1222 Spruce Street, Room 8.302, St. Louis, Missouri, on or before **May 2, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact Region 14.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. E-FILING

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EDT) on **May 9, 2008**. The request may **not** be filed by facsimile.

Dated: April 25, 2008,
at St. Louis, Missouri

/s/ [Ralph R. Tremain]

Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14